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In re Application of
Jackson et al.
Serial No. 10/601,602
Filed: June 23, 2003
For: Low Energy Chlorate Electrolytic Cell and Process

: DECISION
: DENYING
: PETITION

This is a decision on the December 12, 2006, "Petition to Director under 37 CFR 1.181(a)(3)" requesting that the rejection of claims 8-17 under 35 USC 112 be designated as a new grounds of rejection and that prosecution be reopened for the examiner to more fully respond to applicant's arguments.

The petition is before the Director of Technology Center 1700 for consideration.

The petition is **DENIED** for the reasons below.

DECISION

Applicant filed an Appeal Brief on September 9, 2005. The examiner responded with an Examiner's Answer on November 2, 2006. The instant petition was timely filed on December 12, 2006.

The petition asserts that the rejection of claims 8-17 under 35 USC 112, 1st paragraph (the petition incorrectly refers to the rejection as being made under the 35 USC 112, 2nd paragraph) is a new ground of rejection because the rejection is "newly based upon the examiner reading into independent claim 8 a limitation of dependent claim 9." Specifically the examiner has interpreted "low alkali metal ion transport efficiency" to mean "less than about 60% efficiency." Applicant is apparently referring to the examiner's statement bridging pages 3 and 4 of the brief that one skilled in the art would not know "how to make a permselective membrane with the claimed low alkali metal transport efficiency having less than 60% transport efficiency."

This cannot be considered a *new* ground of rejection because the identical language is found in the final rejection of March 15, 2006. See page 2 of the final rejection.

The petition further asserts that the examiner "failed to address the argument of the Appellants on pages 13-19 of the Appeal Brief." However, the paragraph bridging pages 5 and 6 of the Examiner's Answer provides a reasonably complete, if concise, response to applicant's arguments. There is no requirement that the examiner match applicant's arguments page for page.

For the above reasons, the petition is **DENIED**. The applicant will be forwarded to the Board of Patent Appeals and Interferences for consideration of the appeal.

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